040752

May 28, 2004

Ms. Robin Sweeney
EIS Document Manager
Office of National Transportation
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1551 Hillshire Drive, M/S 011
Las Vegas, NV 89134

RE: Rail Alignment EIS Scoping Comments

Dear Ms. Sweeney:

The National Association of Regulatory Utility Commissioners provides the attached comments for consideration in preparation of the Environmental Impact Statement for the Alignment, Construction and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada as invited in the Notice of Intent (69 FR 18565.)

Inasmuch as much of the purpose and need for the rail line, consideration of other transportation modes and consideration of other rail corridors have already been extensively documented in the Yucca Mountain Repository EIS (DOE/EIS-0250D), we would expect that the alignment EIS can be tightly focused on the environmental impacts of building and operating a rail line along the Caliente-Yucca Mountain corridor. That evaluation of environmental impacts should be done thoroughly and in a timely matter so as to enable completion of the rail line in time to begin shipments to the repository when the repository license is amended to allow receipt and possession of nuclear waste.

Thank you for the opportunity to comment on the EIS scope.

Sincerely,

Brian O'Connell
Director
Nuclear Waste Program Office

Attachment

040252

Comments of the
National Association of Regulatory Utility Commissioners
On the
Scoping of an Environmental Impact Statement
For the
Alignment, Construction and Operation of a
Rail Line to a Geologic Repository at
Yucca Mountain, Nye County, Nevada

1. The most important thing to say is that the scope of the EIS should be on the environmental impacts of constructing and operating various alternative alignments for the rail line within the Caliente corridor that has already been chosen from among a group of five alternative corridors that were already evaluated for environmental impacts in the Yucca Mountain EIS (DOE/EIS-0250F). This new work should build on the work already done in the preceding comprehensive EIS. *It should not have to revisit all of the other mode alternatives or the other alternative rail corridors.* Those matters have been decided.

2. It is noteworthy that the largest chapter of the Yucca Mountain EIS is on various aspects of transportation. So, unless there is something new pertaining to this alignment EIS, there should be no need for duplicative data or analyses.

3. While alternatives need to be considered, per NEPA guidelines, those alternatives should all fall under the scope of connecting the proposed repository with Caliente along the corridor that was described in the corridor selection Record of Decision. In short, this EIS is not about re-visiting the other corridors nor is it about the mostly truck scenario; those decisions have been made unless there is persuasive evidence becomes available that building a rail line along the Caliente corridor is not at all feasible.

4. Following the DOE request for BLM to impose a moratorium on certain mining and grazing uses within the stipulated and broad swath encompassing (we gather) far more acreage than is likely to be used for the rail alignment, there were many questions raised about the property rights of existing land users within the corridor. We suggest the EIS process include presentations on federal land acquisition and land management processes that will apply for the selected alignment. While there may be impacts on certain land users within the corridor, we expect that there are certain mitigation measures that the EIS can address.

5. We understand there are questions pertaining to whether or not the proposed rail line would be used exclusively by DOE or whether there may be other common carrier services provided either during the repository shipment period or after the waste shipments are concluded. This seems to have a bearing on what role the

Surface Transportation Board may have in approving the rail line construction. We inquired about STB jurisdiction and DOE staff indicated that would be addressed within the alignment EIS process. These issues should, in fact, be considered in that process.

6. Since the Yucca Mountain repository rail line terminus is entirely on federal land with present and future access restrictions, any common carrier use of the line seems impractical unless there is additional trackage placed to an accessible terminal off federal property. If any such capability is being considered, there should be a full discussion of what financing would make such a capability possible. Since it would not be required for the repository, we do not believe it should be financed by the Nuclear Waste Fund, unless it comports with the provisions for benefits under the Nuclear Waste Policy Act.

7. We hope this additional NEPA work can be focused and expedited so that the planning, design, permitting, and land acquisition steps can be accomplished in time to allow for what we understand to be a 46 month construction period. There are many stakeholders who are relying on DOE's transportation planning so that they will be prepared to meet their own responsibilities to support initial and sustained waste shipments.

8. We are unaware of the scheduled completion time because we are unaware of what the earliest point at which rail line construction might begin. It does not seem to us that the bulk of the track mileage is within the repository boundary, so we see no need to await the NRC construction authorization license for the repository, before beginning to lay track. If that is not the correct interpretation, we request that the alignment EIS make a full explanation of the rationale for waiting to start construction on the rail line that may take as much as four years to build.

9. Few people not directly involved understand the risks involved and measures taken to protect public health in radioactive materials transportation. Opinion leaders opposed to the repository have made statements as facts that seem more like opinions regarding waste shipment safety. We hope that the EIS can provide the most objective and bias-free portrayal of risk assessment, building upon the relevant sections of the Yucca Mountain repository EIS.

10. Few people understand much about how railroads are built and operated. We also hope the EIS will be as specific as possible on such matters. We know the Department of Energy is "not in the railroad business," yet we are not aware of how the proposed rail operations to deliver nuclear waste to the repository will be conducted. This EIS seems to present a good opportunity to explain that to stakeholders.

11. There are three periods of the life cycle of the proposed rail line that should be examined in terms of environmental impacts. There is the construction phase,

during which there will be some disturbance of natural areas in order to build the operable rail line. The Yucca Mountain EIS made reference to various forms of mitigation that can be employed to offset any temporary adverse impacts. There is the operational phase during which the rail line is put to use for cask delivery over what is forecast as the 24 year emplacement period for the repository. Finally, there is the post-emplacement period, in which there may or may not be further use of the rail line to support the repository. The Yucca Mountain EIS refers to the possibility that the repository could be expanded beyond the current 70,000 metric ton statutory capacity limit. That contingency should be examined for the rail alignment, although it seems little different than a continuation of the same environmental impacts observed in the 24 year waste emplacement period. Another question to be addressed at some point is final disposition of the rail line after the government no longer needs it for waste emplacement.